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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/499,871      | 02/07/2000  | John Ellis           | 081862.P160         | 1846             |

7590 02/28/2006  
Blakely Sokoloff Taylor & Zafman LLP  
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Los Angeles, CA 90025

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| EXAMINER |
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JUNG, MIN

|          |              |
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| ART UNIT | PAPER NUMBER |
|----------|--------------|

2663

DATE MAILED: 02/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                                      |                                     |  |
|------------------------------|--------------------------------------|-------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>09/499,871 | <b>Applicant(s)</b><br>ELLIS ET AL. |  |
|                              | <b>Examiner</b><br>Min Jung          | <b>Art Unit</b><br>2663             |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 November 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-50 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-50 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1-50 are rejected under 35 U.S.C. 102(e) as being anticipated by Rochberger et al., US 6,272,107 (Rochberger).

Rochberger discloses a method of path restoration in an ATM network utilizing point to point switched virtual circuits.

Specifically regarding the present claims, Rochberger teaches a loop-back path to provide connectivity between a first and second nodes (col. 14, lines 22-24, and 34-40, and col. 14, line 56 – col. 15, line 1), the first node having a primary connection and a secondary connection, the primary connection carrying the user connections during a

normal mode, the secondary connection not using network bandwidth during normal mode (col. 14, lines 10-14 and lines 39-45, and col. 15, lines 58-65, and col. 4, lines 65-67); and switching element coupled to the loop-back path and the first node to switch the connectivity from the primary connection to the secondary connection when there is a failure condition at the primary connection (Fig. 17, and col. 16, lines 18-36).

Rochberger further teaches the loop-back path being one of a physical connection (path) and a logical connection (SVC, col. 14, lines 10-14), and failure condition being detected by a network monitor (col. 16, lines 19-21, and lines 45-55).

Rochberger further teaches a re-route handler coupled to switching element to control the switching element based on a connectivity status between the first and the second node, the connectivity status indicating the failure condition at the primary connection between the first and second nodes (col. 16, lines 18-23, and lines 45-55, the transit node and/or the source node function to control the switching operation based on the detected failure condition). Note that the connection status, normal or break, is detected by hardware and/or software at the node, and the switching is performed based on the connection status. See col. 16, lines 18-23, and lines 45-55.

Rochberger further teaches that the secondary connection does not carry user connections during the normal mode. See col. 4, lines 65-67.

Rochberger further teaches that the network switch is an ATM switch (col. 4, lines 50-55), the connections are VPC in ATM switch (col. 4, lines 56-64), and the network monitor is OAM monitor (col. 12, lines 64-66).

Further, it is inherent in Rochberger that the primary and secondary connections have equal connection capacity, because it is not taught otherwise. If Rochberger intended providing different connection capacity for the two connections, it would have been addressed specifically. Since there is not mention of unequal capacity in primary connection and secondary connection, the same capacity is taught by inherency.

### ***Response to Arguments***

3. Applicant's arguments filed November 28, 2005 have been fully considered but they are not persuasive. Applicant argues that Rochberger does not disclose, either expressly or inherently, (1) a loop-back path to provide connectivity between the first and second nodes, the first node having a primary connection and a secondary connection, and (2) a switching element coupled to the loop-back path and the first node to switch the connectivity from the primary connection to the secondary connection when there is a failure condition at the primary connection. Contrary to this argument, Rochberger teaches loop-back method the purpose of which is to provide connectivity between the source and the destination. The first node has a primary connection and a secondary connection (a primary/active path from a source to a destination, and a secondary/redundant path from the source to the destination, see col. 14, lines 12-13, and lines 40-41). The switching element is shown in Fig. 17 and described at col. 16, lines 18-36. One way to read the present limitation on the Rochberger is to relate the switching element of the present invention to the switching fabric 312 of Rochberger, relate the loop-back path to the loop-back path 313, and

relate the first node to the source node. Rochberger's teaching is a path restoration method which utilizes a secondary path (connection) to provide the connectivity between two nodes in node or link failure situations. Therefore, applicant's assertion that Rochberger's loopback path does not provide connectivity between the first and the second nodes is not well grounded. Likewise, applicant's assertion that there is no switch element to switch the connectivity from the primary connection to a secondary connection is also poorly grounded. Fig. 17 clearly shows switch fabric which provides switching function to loopback the communication to a secondary connection. See also col. 16, lines 18-36.

All the arguments presented by applicants have been responded hereto.

If applicants have invented something new, it hasn't been clearly claimed, for prior art teachings read right on the claim limitations. Applicant's argued points may or may not be the novelty of their invention. I don't know. It has not been presented clearly what really makes the present invention distinguish from Rochberger's teaching. Please note, that the patentably distinct feature has to be incorporated into claim language, and pointed out so in the argument. The two points argued by applicants are not persuasive since Rochberger does provide teachings for both points raised, as addressed above.

### ***Conclusion***

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Min Jung whose telephone number is 571-272-3127. The examiner can normally be reached on Monday through Friday 9:00 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Ngo can be reached on 571-272-3139. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MJ  
February 21, 2006

A handwritten signature in black ink, appearing to read "Min Jung". The signature is fluid and cursive, with the first name "Min" and the last name "Jung" clearly distinguishable.

Min Jung  
Primary Examiner